



Faith@Work

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- Employees need not leave their religion at home.
- Title VII requires that employers accommodate religious practices.
- Employers are required to accommodate religious practices unless a religious accommodation poses an “undue hardship.”
- An accommodation poses an undue hardship if it would pose “more than a de minimis burden” on the operation of the business.



Covered Practices

- **Not working on the Sabbath or religious holidays**
- **Wearing religious clothing or articles** *e.g.*, a Muslim hijab (headscarf), a Sikh turban, or a Christian cross
- **Observing a religious prohibition against wearing certain garments** *e.g.*, a Muslim, Pentecostal Christian, or Orthodox Jewish woman's practice of not wearing pants or short skirts
- **Adhering to shaving or hair length observances** *e.g.*, Sikh uncut hair and beard, Rastafarian dreadlocks, or Jewish peyes (sidelocks)



Religious Accommodations

- When an employer's policy or preference conflicts with an employee's known ***sincerely held religious beliefs or practices***, the employer must make an exception unless it would pose an undue hardship on the operation of the business.
- An employer may still hold other employees to the rules and expectations.



Religious Accommodations

- An employer should not automatically assume that a practice is not sincere just because
 - it is novel
 - the belief or degree of observance changed over time (e.g., employee converts, or becomes more observant), or
 - is only observed on a particular holiday (e.g., only wearing a Muslim headscarf during Ramadan).



Religious Accommodations

- ***EEOC v. Abercrombie & Fitch Stores, Inc.***, 135 S.Ct. 2028 (2015)
- Samantha Elauf applied for a job as a salesperson at Abercrombie & Fitch. Elauf, a devout Muslim, wore a headscarf to her job interview. She did not say that she wore the headscarf for religious reasons.
- The store's assistant manager, who conducted the interview, gave Elauf a rating that qualified her to be hired. However, the manager was concerned that Elauf's headscarf would conflict with the store's Look Policy.



Religious Accommodations

- The assistant manager eventually sought the district manager's guidance regarding whether the headscarf was a forbidden “cap” under the Look Policy.
- The assistant manager informed the district manager that she believed Elauf wore her headscarf for religious reasons.
- The district manager told the assistant manager that Elauf's headscarf would violate the Look Policy and directed the assistant manager not to hire Elauf.



Religious Accommodations

- The 10th Circuit Court concluded that ordinarily an employer cannot be liable under Title VII for failing to accommodate a religious practice until the applicant (or employee) provides the employer with actual knowledge of his need for an accommodation.
- Supreme Court reversed. “An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions.



Religious Accommodations

- “...Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them favored treatment, affirmatively obligating employers not “to fail or refuse to hire or discharge any individual ... because of such individual's” “religious observance and practice.” 135 S. Ct. 2028, 2034



Undue Hardship

- A religious accommodation poses an “undue hardship” if it would pose “more than a *de minimis* burden” on the operation of the business
 - case-by-case, fact -specific determination.
 - much lower (i.e., easier for an employer to show) than the “undue hardship” defense to disability accommodation (defined in the ADA as “significant difficulty or expense”)



Example:

- Adarsh, who wears a turban as part of his Sikh religion, is hired to work at the counter in a coffee shop. After Adarsh begins working, the crew from the construction site near the shop stops coming in for coffee. The crew complains to the shop manager that Adarsh makes them uncomfortable in light of the September 11th attacks.
- *Can the manager terminate Adarsh because the coffee shop is losing business?*
- *What if the manager transfers Adarsh to a kitchen position ?*



Example:

- Amy is applying for a position in a call center. She tells the interviewer that she is a Seventh-Day Adventist and cannot work Saturdays. The center's policy requires that each employee in the call center work one Saturday morning shift per month. Amy is otherwise qualified for the position.
- *Can management refuse to hire Amy because she cannot work Saturdays?*
- *What if management knows that other employees will gladly pick up Amy's Saturday shifts?*



Is a Practice Religious?

- Determining whether a practice is “religious” under Title VII turns not on the nature of the activity, but on the employee’s motivation
- *Examples: beards, dreadlocks, tattoos, piercings, modest clothing*
 - “religious” under Title VII if worn for religious reason
 - not protected as “religious” if worn for fashion or other secular reason



Is a Practice Religious?

- “Religion” and “religious practices” are defined broadly to include “moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views.”



Is a Practice Religious?

- ***EEOC v. United Health Programs of America***, E.D.N.Y, No. 14-cv-3673 (filed June 11, 2014)
 - EEOC alleges that Defendant coerced employees to participate in ongoing religious activities since 2007.
 - Alleged activities included group prayers, candle burning, and discussions of spiritual texts.
 - These practices are part of a belief system that the defendants' family member created, called "Onionhead."



Is a Practice Religious?

- EEOC alleges that employees were told to wear Onionhead buttons, pull Onionhead cards to place near their work stations and keep only dim lighting in the workplace.
- EEOC alleges that when employees opposed taking part in these activities or did not participate fully, they were terminated.



How Does an Employer Know To Consider a Religious Accommodation?

- Typically, employee will indicate that an exception is needed for religious reasons.
- But applicants and employees will not know to ask for an accommodation until the employer makes them aware of a workplace requirement that conflicts with their religious practice.



How Does an Employer Know? (cont'd)

- The applicant or employee need not use any "magic words" to make the request, such as "accommodation" or "Title VII."
- If the employer reasonably needs more information, however, the employer and the employee should discuss the request.
- In some instances, even without a request, it is obvious that the practice is religious and conflicts with a work policy, and therefore that accommodation is needed.



Example:

- James is hired based on an online application and a telephone interview. When he arrives the first day with an unshorn beard, his supervisor informs him of the company's "clean-shaven" policy, and tells him he must comply or be terminated.
- James refuses to shave, but fails to inform his supervisor that he wears his beard for religious reasons. He is fired.

Does James have a viable claim for denial or religious accommodation?



Example: Corporate “Image” and Religious Accommodation

- Jon, a clerical worker who is an observant Jew, wears tzitzit (ritual knotted garment fringes at the four corners of his shirt) and a yarmulke (or skull cap) in conformance with his Jewish beliefs. XYZ Temps places Jon in a long-term assignment with one of its client companies.
- The client asks XYZ to notify Jon that he must remove his yarmulke and his tzitzit while working at the front desk.
- According to the client, Jon's religious attire presents the "wrong image" and also violates its dress code prohibiting any headgear and requiring "appropriate business attire."
- *What result if XYZ Temps complies with the client's request.*



Safety, Security, or Health Concerns

- Safety, security, or health concerns can justify denial of accommodation *if the practice actually poses an undue hardship on the operation of the business.*
- The employer should not assume that the accommodation would pose an undue hardship.
- In many instances, there may be an available accommodation that will permit the employer to provide accommodation without more than a minimal burden on safety, security, and health, and thereby avoid undue hardship.



Harassment and Retaliation

- *Coercion*: Requiring or coercing an employee to abandon, alter, or adopt a religious practice as a condition of employment can be disparate treatment or harassment.
- *Hostile Work Environment*: Religious harassment may also occur when an employee is subjected to unwelcome statements or conduct based on religion, i.e., offensive remarks about a person's religious beliefs or practices, or verbal or physical mistreatment that is motivated by the victim's religious beliefs or practices.
- *Retaliation*: remember that requests for religious accommodation are protected activity.



Compliance Tips

- Train managers to allow employees to wear religious garb absent undue hardship, even if it requires making an exception to a dress code or uniform policy.
- Train managers that the law does not permit employment decisions, including assignment to a non-customer contact position, because of “customer preference.”
- Train managers to consider altering schedules to accommodate religious needs.
- Train all staff to avoid stereotyping based on religion.



Resources for Additional Information

- **Religious Garb and Grooming in the Workplace: Rights and Responsibilities**
www.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm
- **EEOC Compliance Manual: Religious Discrimination (2008)**
www.eeoc.gov/policy/docs/religion.html

Resources (cont'd)



Questions and Answers: Religious Discrimination in the Workplace (2008)

www.eeoc.gov/policy/docs/qanda_religion.html

Best Practices for Eradicating Religious Discrimination in the Workplace (2008)

www.eeoc.gov/policy/docs/best_practices_religion.html



Resources (cont'd)

- **Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs Under the Equal Employment Opportunity Laws**
www.eeoc.gov/eeoc/publications/backlash-employee.cfm
- **Guidelines on Religious Discrimination**
29 CFR Part 1605



Resources (cont'd)

- **Guidelines on Religious Exercise and Religious Expression in the Federal Workplace (1997)**
<http://clinton2.nara.gov/WH/New/html/19970819-3275.html>